IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 428 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

AURANGZEB MAHFUZKHAN

Appearance:

1. Special Criminal Application No. 428 of 2001

MR VM PANCHOLI, APP for Petitioner No. 1-2

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 18/06/2003

ORAL JUDGEMENT

The State of Gujarat has preferred this special criminal petition under Article 226 and 227 of the Constitution of India, in order to challenge an order

dated 24/01/01 recorded by the learned Sessions Judge, Valsad at Navsari in Criminal Appeal No.34/2000, under which the learned Judge allowed the said appeal and set aside the order dated 23/05/2000 recorded by the learned Dy.Conservator of Forest, Valsad (North) confiscating the truck of the contesting respondent for committing forest offence.

2. The facts of the case may be briefly states as follows;

That on 19/02/99, in the early hours, the forest officers were on duty on National Highway No.8. During the course of their checking of the vehicles, a truck bearing No.GTO 3522 was intercepted. Timber of Kher was found to have been loaded in the said truck. It was the case of the Forest Department that it was a forest produce and was being illegally carried in the said truck. However, when the driver was required to stop the vehicle, he did not stop it and escaped alongwith the timber of Kher and the truck.

About fifteen days thereafter, the aforesaid truck was again noticed. But, at that time, it was empty. However, the truck was stopped and it was seized. Notice was issued to the respondent. After hearing, the learned Dy.Conservator of Forest directed that the said truck be confiscated to the State.

3. Feeling aggrieved by the said order of the learned Dy.Conservator of Forest, the respondent preferred Criminal Appeal No.34/2000 before the learned Sessions Judge, Valsad at Navsari. After hearing, the learned Judge allowed the said appeal and set aside the aforesaid order of the learned Dy.Conservator of Forest, Valsad (North).

4. Feeling aggrieved by the said order of the learned Sessions Judge, the State has preferred this petition before this Court. It has been contended here that there was sufficient material before the learned Dy.Conservator of Forest for confiscating the truck in question. That, therefore, the order of the learned Sessions Judge is illegal and perverse and deserve to be set aside.

5. On receiving the petition, Rule was issued. However, none appears in response to the service of

notice of Rule. I have heard Mr.V M Pancholi, learned APP for the State and have perused the papers.

6. On going through the record, it is clear that according to the case of the Forest Department, the truck involved in the matter was stopped by the forest officers on 19/02/99. At that point of time, timber was loaded therein. But the driver did not stop the vehicle and escaped with the truck and the forest goods. Thereafter, the truck was again noticed and it was intercepted. At that time, it was empty. After issuing notice to the respondent, it was ordered to be confiscated to the State.

7. It seems that the learned Dy.Conservator of Forest had considered an affidavit of the driver of the said truck, stating that the owner of the truck, the present respondent, had instructed him to take the said truck and to follow the instruction of the person accompanying the said truck and accordingly, timber was loaded therein. It would go to show that the timber was accordingly loaded in the said truck with the knowledge of the owner of the truck.

8. It appears that the said affidavit was sworn before the learned Executive Magistrate and Mamlatdar. However, it is not clear at whose instance the said affidavit was prepared. The driver was not examined before the learned Dy.Conservator of Forest. No opportunity was given to the respondent to cross-examine the said deponent. Even the statement of the said driver was considered by the learned Dy.Conservator of Forest. So, the statement as well as the affidavit of the driver were considered by the said officer, without providing an opportunity to the respondent to examine the affidavit and the statement.

9. It is also not clear, as to how the affidavit and the statement came to be in possession of the learned Dy.Conservator of Forest. It may be that, with a view to save his skin, the driver may have made some statements here or there against the interest of the respondent. Therefore, it would not be very much safe to rely upon the said statement and the affidavit of the driver.

10. The learned Sessions Judge has found it risky to rely upon the said statement and affidavit of the driver. The said approach of the Sessions Judge cannot be treated to be illegal. Once the approach is not found to be illegal, then in that case, there is no need for this Court to interfere with the order of the learned Sessions

Judge, in exercise of revisional jurisdiction under Section 397 of the said Code.

11. The powers, functions and duties of this Court exercising revisional jurisdiction under Section 397 of the said Code are very limited. This Court can disturb the order of the lower Court, only when it is found that the order is ex-facie illegal and perverse or that when the said Court had no jurisdiction to entertain such a matter. It is very clear that under Section 61 of the Forest Act, the learned Sessions Judge had power to entertain a criminal appeal against an order of the Dy.Conservator of Forest. Therefore, the learned Sessions Judge was within jurisdiction to entertain the appeal against the order of the learned Dy.Conservator of Forest. It, therefore, cannot be said that the order is without jurisdiction.

12. Then, it was a matter of appreciation of evidence before the Sessions Court. After going through the affidavit and the statement of the driver, the learned Sessions Judge found it to be unjust and improper, as well as risky to depend upon the solitary statement and affidavit of the driver. This Court will not undertake re-appreciation of evidence, while exercising revisional jurisdiction. Once the re-appreciation of evidence is not undertaken, then the judgment and order of the learned Sessions Judge cannot be said to be against the weight of evidence on record. In that view of the matter, there is no reason to interfere with the finding recorded by the learned Sessions Judge, holding that it is unsafe to rely upon the statement and affidavit of the driver, involving the respondent and exonerating the driver himself from the clutches of law. The driver was interested in saving his skin and in the process he may be involving the respondent falsely also. Therefore, it would be said that the respondent had a knowledge that the driver was using the said truck for carrying forest produce illegally. If that is not a finding of the Court, then the truck cannot be confiscated. In that view of the matter, the order of the learned Dy. Conservator of Forest was rightly held to be illegal by the learned Sessions Judge. Therefore, the judgment of the Sessions Judge is not required to be interfered with, in this revisional jurisdiction.

13. For the foregoing reasons, there is no merit in the present criminal application and consequently, it deserves to be dismissed. In above view of the matter, this criminal application is dismissed and the judgment and order of the learned Sessions Judge dated 24/01/01

passed in Criminal Appeal No.34/2000 are hereby confirmed.

(D. P. Buch, J.)

pravin/